

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Lupton Industries for apparent violation of Rule 25-24.515, F.A.C., Pay Telephone Service.

DOCKET NO. 990735-TC
ORDER NO. PSC-99-1378-SC-TC
ISSUED: July 16, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Lupton Industries (Lupton) currently holds Certificate of Public Convenience and Necessity No. 2406, issued by this Commission on November 14, 1989, authorizing the provision of pay telephone service. On January 5, 1999, Lupton filed a 1998 regulatory assessment fee return, reporting gross intrastate revenues of \$1,359.25 and one pay telephone in operation. On February 16, 1999, our staff performed routine service evaluations on a pay telephone operated by Lupton. Through written correspondence, we notified Lupton of apparent violations. On March 10, 1999, we received a Service Violation Correction Form from Lupton signifying that all apparent violations were corrected. On April 16, 1999, our staff again reevaluated the pay telephone station. Although Lupton reported that all violations had been corrected, the table provided as Attachment A, incorporated herein by reference, depicts the apparent rule violations that were the same apparent violations observed during the initial evaluation.

Pursuant to Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully

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violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order the company to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Lupton's conduct at issue here, would meet the standard for a "willful violation." We find that Lupton's conduct in providing pay telephone services in apparent violation of Commission Rule 25-24.515, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, we find it appropriate to order Lupton to show cause in writing within 21 days of the date of this Order why it should not have Certificate No. 2406 canceled or be fined \$100 for apparent violation of Rule 25-24.515, Florida Administrative Code. If Lupton timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. Lupton's response must contain specific allegations of fact or law. If Lupton fails to respond to the Commission's Order to show cause, and the fine is not paid after reasonable collection efforts by the Commission, Certificate Number 2406 shall be canceled.

Any fine monies received by the Commission shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lupton Industries shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$100 or have Certificate No. 2406 canceled for apparent violation of Rule 25-24.515, Florida Administrative Code. It is further

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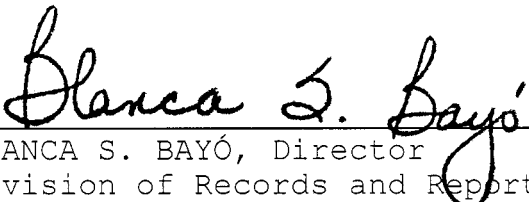
ORDERED that any response to the Order to Show Cause filed by Lupton Industries shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the \$100 fine. It is further

ORDERED that in the event Lupton Industries fails to respond to this Order and the fine is not paid after reasonable collection efforts by the Commission, Certificate Number 2406 shall be canceled. It is further

ORDERED that upon payment of the fine or cancellation of the certificate, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 6, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

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ATTACHMENT A

Pay Telephone Station Number	25-24.515 (8)
	Repair/Refund Number Not Working Properly
813-914-8829	X